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August 10, 2018

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Development, WT Docket No. 17-79.

Dear Ms. Dortch:

American Tower Corporation ("American Tower") strongly supports the efforts of the Federal Communications Commission ("Commission") to advance the deployment of 5G wireless services. This letter supplements American Tower's recent meetings with Commissioners and their legal advisors regarding its experience in deploying network infrastructure and provides further detail regarding its recommendations on balancing the need to streamline siting rules while preserving critical fundamental government prerogatives.[1]

American Tower concurs with commenters that the Commission has ample authority to identify local siting rules and practices that violate Sections 253 and 332 of the Communications Act by unduly burdening the deployment of wireless infrastructure, including the deployment of small cells in public rights-of-way.[2] The Commission recently exercised such authority to interpret Section 253 to prohibit express or *de facto* local moratoria that prevent or unreasonably delay the deployment of telecommunications infrastructure.[3] As Commissioner Carr and others have stated, any curtailment of local siting authority through the exercise of such authority should be accomplished in a way that addresses legitimate concerns raised by local governments, which should be taken into consideration and accommodated to the extent that they do not unduly burden or impede the deployment of new or expanded broadband wireless services.[4] The ultimate outcome should be local siting rules that are reasonable, non-discriminatory and transparent.

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[1] *See, e.g.,* Letter from Becca Gould, American Tower Corporation, to Ms. Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed June 29, 2018) *(*"American Tower June 29th Letter"); Letter from Michael Pryor, Counsel for American Tower Corporation, to Ms. Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed June 14, 2018) ("American Tower June 14th Letter*");* Letter from Michael Pryor, Counsel for American Tower Corporation, to Ms. Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed June 7, 2018) ("American Tower June 7th Letter").

[2] *See, e.g.,* Letter from Kenneth Simson, Senior VP and General Counsel, Crown Castle International Corp., to Ms. Marlene H. Dortch, Secretary, FCC, Docket Nos. WT-17-79; 16-421 (filed June 7, 2018) ("Crown Castle June 7th Letter"); Letter from Rebecca Murphy Thompson, EVC & General Counsel, Competitive Carriers Association, to Ms. Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 17-79, 15-80, WC Docket 17-84 (filed June 7, 2018) ("CCA Letter"); Reply Comments of the Wireless Infrastructure Association, WT Docket 17-79; WC Docket 17-84, at 16-18 (filed July 17, 2017) ("WIA Reply Comments").

[3] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure*, Third Report and Order and Declaratory Ruling, FCC 18-111, (rel. Aug. 3, 2018) ("*Moratoria Declaratory Ruling*").

[4] *See, e.g., FCC Studying Further Small Cell Regulatory Changes: Carr*, aglMediaGroup, June 19, 2018 (quoting Commissioner Carr as stating that "[y]ou have to balance the legitimate interests of the locality and the burdens on the rights of way and their costs for tearing up streets.") available at http://www.aglmediagroup.com/fcc-studies-further-small-cell-regulatory-changes-carr/ (last visited

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American Tower is a global real estate investment trust and a leading independent owner, operator and developer of multitenant communications real estate. It has worked arm in arm with wireless providers and local government officials as network needs have evolved. Today's networks and the networks of the future will need to combine traditional macro cells for broad coverage and small cells or distributed antenna systems (DAS) networks to meet the ever-increasing demand for capacity. The use of closely spaced small cells is particularly needed and appropriate in dense urban areas where use of short range millimeter wave spectrum may be most efficiently coupled with network densification. American Tower has integrated its network to accommodate the dual needs of coverage and capacity. In addition to its more than 40,000 macro cell sites in the U.S., American Tower is also the leading provider of neutral host indoor DAS networks in the U.S. and offers small cell infrastructure in the U.S. and globally, all in recognition of the increasingly heterogeneous nature of wireless networks.

Widespread Deployment of 5G Will Require a Mix of Macro and Small Cell Sites

As the nation moves to 5G networks, the rapid deployment of heterogeneous networks becomes ever more critical.[5] Network deployments will consist of multiple layers – traditional macro towers will continue to provide a blanket of coverage as it does today, while underneath this umbrella, a combination of small cells and an array of other technologies will be deployed to increase network capacity, particularly in dense urban areas.[6] Network densification, which will entail the deployment of hundreds of thousands of small cells, creates enormous challenges as deployment needs must be balanced against the legitimate concerns of local governments to preserve public safety and local aesthetic values. Appropriate policies can enhance and expedite private sector investment in the integrated network infrastructure needed for next generation broadband services.

American Tower supports the deployment of heterogeneous networks and is working with wireless providers, technology innovators, and local communities to integrate small cell deployments into their overall network configurations. Additionally, American Tower has launched innovation councils exploring technological developments unfolding in the wireless industry to help drive increased connectivity and optimized solutions.[7] One example of these efforts is an early-stage solution being evaluated in the U.S. to design and deploy a high performance smart pole.[8]

August 8, 2018). American Tower's recommendations take into account concerns raised during discussions at the 2018 Conference of Mayors in which American Tower participated as did Commissioners Carr and Rosenworcel.

[5] Although some limited 5G deployments may begin in the U.S. by the end of this year, large scale global deployment is not expected until after 2020. U.S. Technology and 5G Update, April 2018, at slide 24, available at http://www.americantower.com/Assets/uploads/files/PDFs/vendor-relations/investor-relations/2018/us-technology-and-5g-update-april-2018.pdf (last visited August 8, 2018). The life cycle of new wireless technologies has typically been on the order of approximately 20 years, and there is no reason to believe 5G would be different. *Id.* at slide 17. American Tower anticipates that even by 2025 4G technology will still constitute 50 percent of the wireless market. *Id*.

[6] Macro cell sites will continue to be a central component of wireless infrastructure even with the deployment of 5G because so much of the population lives outside of dense urban areas where macro sites are the most efficient way to transmit wireless signals. More than 80% of the population lives in suburban or rural areas where population density is less than 7500 people per square mile. Macro towers are optimal for wireless network deployments in these suburban and rural areas. *Id.* at slide 22. Macro cell sites are thus critical to the deployment of wireless broadband in rural areas. *See also*, Comments of T-Mobile, WT Docket No. 17-79, WC Docket No. 17-84, at 5 (filed June 15, 2017) ("T-Mobile Comments") (exploding demand will require "ubiquitous infrastructure" that "includes traditional macro tower sites and collocations" and, increasingly, small cells for densification).

[7] *See,* Innovation at American Tower, available at http://www.americantower.com/corporateus/smartpoles/ (last visited August 8, 2018).

[8] Connecting the Smart City, American Tower Philips, available at http://www.americantower.com/corporateus/smartpoles/ (last visited August 8, 2018).

To facilitate the widest possible deployment of next generation broadband wireless networks in a rapid and efficient manner American Tower supports two primary principles. First, government siting rules should continue the long-standing preference for collocation instead of the construction of new support structures. Second, any curtailment of local government discretion over the siting of small cells based on their smaller visual footprint should ensure that small cells actually are, and will remain, small. These principles are consistent with past Commission precedents balancing the need for rapid deployment of wireless infrastructure with local land use values.

Collocation Instead of Construction

The Commission has long displayed a preference for collocation over the construction of new structures.[9] Many localities also have siting provisions that prefer collocation.[10] The reason to encourage collocation is straightforward, it is faster, cheaper, more environmentally sound, and less disruptive than building new structures. The Commission succinctly outlined the advantages of collocation in its *2014 Order* streamlining rules for small cell collocations and implementing Section 6409(a) of the Spectrum Act:

> "First, a 'shared use' approach leverages existing resources and thus facilitates provider efforts to expand both coverage and capacity more quickly. Second, sharing wireless infrastructure – whether towers, other support structures or transmission equipment – reduces costs and promotes access to such infrastructure, and thus may reduce a notable barrier to deployment. Finally, sharing resources – rather than relying on new builds – safeguards environmental, aesthetic, historic, and local land-use values."[11]

[9] *See, e.g., Amendment of the Commission's Environmental Rules*, Order, 3 FCC Rcd 4986, ¶ 7 (1988) ("The Commission has long held that the mounting of antennas on existing buildings or antenna towers generally is environmentally preferable to the construction of a new facility, a preference which is reflected in Note 1 [of 47 C.F.R. § 1.1306]"). Note 1 provides a categorical exclusion from Federal environmental review for the "mounting of antenna(s) and associated equipment (such as wiring, cabling, cabinets, or back-up power), on or in an existing building, or on an antenna tower or other man-made structure. . . .").

[10] *See, e.g.,* CARY, N.C., CODE OF ORDINANCES Appendix A, ch. 5.2.4 (D) (2) (b) (2018) (Identifying as one purpose of Cary's zoning rules encouraging "the location and co-location of telecommunications facilities equipment on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures;"); WOBURN, MASS., ZONING CODE § 5.6.1 (2018) ("To minimize the adverse impact of wireless communication links on adjacent properties and residential neighborhoods, and to minimize the overall number and height of such links to only what is essential and to promote shared use of proposed and existing links, thereby reducing the need for new facilities."); MOUNT PLEASANT, S.C., CODE OF ORDINANCES Title 15 § 156.114 (B) (3) (2014) ("Encourage the use of existing structures for the location and collocation of telecommunications facilities."); SCHAUMBURG, ILL., CODE OF ORDINANCES Title 15 § 154.90.11 (A) (4) (2008) ("Strongly encourage the joint use of existing and new towers as a primary option rather than construction of additional single use towers;"); LEWIS COUNTY, WASH., LEWIS COUNTY CODE ch. 15.50.010 (1) (2001) (Lewis County states that one purpose of their zoning code is to "strongly promote and encourage collocation of new and existing wireless communications antennas to minimize the total number of support structures and towers throughout the county;").

[11] *Acceleration of Broadband Deployment by Improving Wireless Siting Policies,* Report and Order, 29 FCC Rcd 12865, 12868, ¶ 5 (2014) (*2014 Order*). *See also id.* at 12867, ¶ 3 (recognizing that "collocations almost always result in less impact [than building new towers] or no impact at all."); *id.* at 12925, ¶ 142 ("collocation on existing structures is often the most efficient and economical solution for mobile wireless providers that need new cell sites to expand their exiting coverage areas, increase their capacity, or deploy new advanced services.").

Section 6409 of the Spectrum Act reflects Congress's recognition as well of the benefits of collocation. The legislation eliminated local government discretion over requests to collocate on existing wireless towers and base stations as long as there was no substantial change to the existing physical dimensions of those structures.[12]

The concept of shared use underlies the value proposition of many tower companies as it creates substantial efficiencies by allowing wireless companies to free up capital otherwise used for tower construction for other investments, such as making improvements in their own networks.[13] Many tower companies, operating as Real Estate Investment Trusts ("REITs"), construct towers as neutral host sites open to all providers. The economics of this type of business plan creates strong incentives for tower companies to host as many providers as technically feasible on the tower. This creates exactly the type of sharing environment that the Commission has long espoused as it reduces the number of new structures that need to be constructed.

The Commission Should Further Expedite Reviews of Collocations

Given the enormous advantages of collocation over new construction, American Tower believes regulatory policies at all government levels should continue to provide strong incentives to share existing infrastructure. The FCC enables jurisdictions to do their part in furthering broadband expansion by supporting communities' abilities to evaluate and choose collocation over construction. Incentives to collocate can be enhanced, for example, by further expediting state and local regulatory reviews of collocation applications, both for macro towers and for small cells.

To further incentivize collocation over the construction of new structures, American Tower supports the Wireless Infrastructure Association's ("WIA") proposal to establish a 60-day shot clock for local government reviews of small cells located on an existing or replacement poles in a public right-of-way, and for collocation applications governed by Section 332(c)(7) of the Communications Act.[14] Failure to meet the 60-day shot clock should result in the collocation application being deemed approved, allowing the applicant to begin the installation process without further delay.[15] These time frames and the "deemed granted" remedy would be consistent with those adopted by the Commission in implementing Section 6409 of the Spectrum Act.[16]

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[12] *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409 (a), 126 Stat. 232 (2012) ("Spectrum Act"). Section 6409(a) provides, in pertinent part, that "[n]otwithstanding [47 U.S.C. § 332(c) (7)] or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."

[13] There are over 120 tower companies, many of which are small "mom-and-pop" operations. The vast majority of towers are now owned by these independent operators, not wireless providers. Brattle Group, REIT Supported Wireless Infrastructure: Foundation of the Mobile Economy, at 13-14 (May 23, 2017) available at http://www.brattle.com/news-and-knowledge/news/brattle-report-discusses-the-impact-of-the-wireless-infrastructure-industry-on-the-us-economy (last visited August 8, 2018); *id.* at 15 (noting that many carriers have freed up significant invested capital by diverting some or all of their tower assets, primarily to independent tower operators. . . .Carriers have been able to use the capital freed up through these transactions to make improvements in their own networks.").

[14] *See, e.g.,* Comments of the Wireless Infrastructure Association, WT Docket No. 17-79, WC Docket No. 17-84, at 20-21, 27 (June 15, 2017) ("WIA Comments").

[15] *See, e.g.,* WIA Comments at 15-20.

[16] *2014 Order*, 29 FCC Rcd at 12956-58, ¶¶ 215-220 (adopting a 60-day review period for Section 6409 applications); *id.* at 12961, ¶ 226 (establishing a deemed granted remedy).

The Commission Should Address the Existing Disparity in Rules Governing Compound Expansions

To further stimulate collocation, American Tower supports requests that the Commission harmonize the current disparate rules regarding the need for governmental review of expansions of the compound around macro towers.[17] Limited compound expansions are excluded from review when a tower is being replaced, but not if the compound expansion is needed to accommodate collocations. American Tower recommends that the Commission exclude review in both circumstances. Extending the exemption for compound expansions to collocations would promote broadband deployment without impinging on local land use values.

In 2004, the Commission adopted the Nationwide Programmatic Agreement ("NPA") that excludes from national historic review certain categories of tower modifications that do not substantially increase the size of the existing tower.[18] With respect to replacement towers, the NPA applies the same substantial increase in size criteria that apply to determine when collocations are excluded from review under the Nationwide Collocation Programmatic Agreement ("Collocation Agreement"),[19] with one key difference – for replacement towers, the NPA "permits construction and excavation within 30 feet in any direction of the leased or owned property previously surrounding the tower."[20] No compound expansions are permitted for collocations under the Collocation Agreement.[21] The Commission also did not apply the compound expansion exclusion to collocations covered by Section 6409 of the Spectrum Act, which requires localities to approve collocations that do not substantially change the dimensions of the tower.[22]

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[17] *See, e.g.,* WIA Comments at 22-32; Comments of Crown Castle International Corporation, WT Docket 17-79, at 39 (filed June 15, 2017) ("Crown Castle Comments").

[18] *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073 (2004) (*2004 Order*).

[19] See, *Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with Respect to Collocating Wireless Antennas on Existing Structures*, 16 FCC Rcd 5574 (2001); 47 C.F.R. Part 1, App. B. ("Collocation Agreement"). Under the Collocation Agreement, four criteria define a substantial increase in size: (1) an increase in tower height by more than 10% or more than 20 feet, whichever is greater; (2) the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; (3) adding an appurtenance to the body of the tower that would protrude from the edge of the tower by more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; and (4) any expansion of the tower compound. Collocation Agreement, Stipulation I. C. (1)-(4). As noted, the first three of these also apply to replacement towers. *See* Nationwide Programmatic Agreement for Review of Effects on Historic Properties For Certain Undertakings Approved by the Federal Communications Commission, 47 C.F.R. Part 1, App. C. III.B. (excluding from review replacement towers that do "not substantially increase the size of the existing tower under elements 1-3" of the substantial size test as defined in the Collocation Agreement).

[20] *2004 Order,* 20 FCC Rcd at 1089-90, ¶¶ 42-45 (2004) (*2004 Order*). *See also,* Nationwide Programmatic Agreement for Review of Effects on Historic Properties For Certain Undertakings Approved by the Federal Communications Commission, 47 C.F.R. Part 1, App. C. III.B. (excluding from review replacement towers that do "not substantially increase the size of the existing tower under elements 1-3" of the substantial size test as defined in the Collocation Agreement but permitting "excavation . . . that does not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction or involve the excavation outside these expanded boundaries or outside any existing access or utility easement related to the site.")

[21] Collocation Agreement at Stipulation I. C.(4) ("Substantial increase in size of the tower means . . . [t]he mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access of utility easements currently related to the site.")

[22] *See 2014 Order,* 20 FCC Rcd at 12944-45, ¶ 188. The substantial change test for Section 6409 collocations is codified at 47 C.F.R. § 1.40001(b) (7) (iv) (defining substantial change to include "any excavation or deployment outside the current site"); *id.* at 1.40001(b) (6) (defining site as "the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site."). The Commission's refusal to adopt the compound expansion exclusion was based solely on its interpretation of the term "replacement" in Section 6409 as being limited to the replacement of equipment, not of towers.

There is no reasonable policy justification for this divergent treatment between collocations and tower replacements given that the Commission justified allowing compound expansions for replacement towers in order to facilitate additional collocations. In adopting the replacement tower exclusion, the Commission found that "[s]imilar to collocations, strengthened [replacement] structures may reduce the need for more towers by housing up to two, four or more additional antennas."[23] Collocating on existing towers that can accommodate multiple antennas without needing to be replaced accomplishes the very same goal, it reduces the need to build new towers.

The Commission also found that allowing this modest compound expansion resulted in minimal risk. Because tower replacements had to meet the same substantial size limitations as collocations the only additional risk from permitting compound expansions would be to potentially disturb archeological properties. The Commission concluded that this risk was "small" given that any excavation would be "very close to the existing construction."[24] This risk is no greater in permitting the same modest up-to-30 foot expansion if it is needed to host additional antennas on the existing tower. Moreover, to further minimize risk of harm to land use values, American Tower believes the Commission should apply the same cease work and notice requirements for expanding compounds for collocations that apply for replacement towers.[25] The Commission found that these requirements further mitigated any concerns regarding possible adverse effects of expanding compounds. Local governments should also retain the ability to impose generally applicable and reasonable limitations such as setbacks, landscaping and fencing requirements.

American Tower's experience is consistent with other evidence in the record that the national historical review of compound expansions is causing significant delay in collocating additional providers on existing towers and is, therefore impeding providers' efforts to deploy better, faster and more ubiquitous wireless broadband services to meet ever increasing demand.[26] Broadband expansion goes hand-in-hand with compound expansion. One reason for the need for expansion is that many towers were originally built by service providers solely to serve their own needs, which could be accommodated by placing one or two equipment shelters in a small compound. The tower model has shifted from single-tenant proprietary use to multi-tenant collocations driven in part by wireless carriers selling their towers to independent, neutral host companies such as American Tower. Hosting multiple carriers on the tower requires placing more equipment on the ground, in turn requiring more space around the base of the tower. The transition from single tenant towers to neutral host, multi-tenant infrastructure not only crisply explains the independent tower business model, it also reflects the critical value of reallocating under-utilized telecommunications assets for the public good and taking necessary steps to accommodate the highest and best use of macro sites throughout the telecommunications

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See 2014 Order, 29 FCC Rcd 12949, ¶¶ 198-199. The Commission, however, did not appear to weigh policy considerations or assess whether limiting compound expansions solely to replacement towers made sense in light of the Commission's collocation-based justification and the small risk to local land use.

[23] *2004 Order*, 20 FCC Rcd at 1090, ¶ 45.

[24] *Id.* ("Given the limitation of the exclusion to replacements that do not effectuate a substantial increase in size, it is highly unlikely that a replacement tower within the exclusion could have any impact other than on archeological properties. . . . Balancing the small risk of the new archeological disturbance against the benefits of encouraging replacement rather than the construction of new towers, and taking into account the requirement cease work and provide notice in case of unanticipated discoveries, we conclude that an exclusion for replacement towers, limited to within 30 feet of the existing leased or owned boundary, is reasonable and appropriate.").

[25] *2004 Order*, 20 FCC Rcd at 1090, ¶ 45.

[26] *See, e.g.*, WIA Comments at 23-24 (urging the Commission to adopt a 60-day shot clock for limited compound expansions, which should be deemed an Eligible Facilities Request); *id.* at 72-73 (urging Commission to extend the compound expansion component of the NPA to collocations); WIA Reply Comments at 37; Crown Castle Comments at 39 (explaining that this "reform will have a significant impact in reducing delays and expenses, as an estimated 95% of all Crown Castle's Section 106 reviews performed are triggered by fee or leasehold expansions").

ecosystem. As such, compound expansions become both a necessary and repeatable process in the accommodation of multiple carriers in the neutral-host environment.

American Tower believes the Commission should take this opportunity to reverse course and permit compound expansions for collocations on macro towers, whether pursuant Section 6409 or the Collocation Agreement, to the same extent that they are permitted for replacement towers. Specifically, American Tower believes the Commission should revise its rules to provide that any excavation associated with a collocation that does not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site does not: (1) constitute a substantial change for purposes of Section 6409; and (2) constitute a substantial increase in size for purposes of the Collocation Agreement.

To Balance the Need to Deploy Small Cells with Local Land Use Values, the Commission Should Affirm that State and Local Governments Act May Impose Cumulative Size Limitations

The Commission is facing a difficult challenge in balancing the need for the rapid deployment of infrastructure to support 5G with preserving local land use values. A number of parties in this proceeding have identified practices by localities that unnecessarily delay, or unreasonably increase the cost of, small cell deployments in the public right-of-way, leading to calls for preemption.[27] American Tower agrees with commenters that the Commission has authority to interpret Sections 253 and 332(c)(7) of the Act to identify practices that prohibit or have the effect of prohibiting the deployment of small cells in public rights-of-way.[28] Although Section 253(c) preserves state and local government ability to "manage" the public rights-of-way, the Commission has narrowly interpreted this provision to protecting only those activities that involve the actual use of the right-of-way, such as coordinating construction schedules, bonding and indemnity requirements, the enforcement of building codes and tracking various systems using the right-of-way to prevent interference between them.[29] Actions, however, that discriminate among different types of communications providers or impose unreasonable or discriminatory fees may be preempted.[30] The Commission should also consider clarifying the judicial gloss on the effective prohibition language in Section 332(c)(7). Courts have found that local actions are prohibited by 332(c)(7) only if they prevent deployments needed to close coverage gaps. American Tower recommends the Commission clarify that this coverage gap limitation does not apply to closely spaced small cell deployments in the right-of-way that are designed to increase capacity.[31]

The primary justification for preempting state or local siting rules for small cell deployments in public rights-of-way[32] is that localities are using siting policies developed for macro towers to govern the deployment of small cells which, when properly limited and deployed, have a significantly lower impact on communities.[33] Given this rationale,

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[27] *See, e.g.,* WIA Reply Comments at 3-6 (summarizing record of local regulatory barriers to infrastructure deployment).
[28] *See*, *e.g.*, Crown Castle June 7th Letter at 8-18; WIA Comments at 29-30. *See also*, *Moratoria Declaratory Ruling*, at ¶ 161.
[29] *See*, *e.g.*, *Moratoria Declaratory Ruling*, at ¶ 160; *TCI Cablevision of Oakland County*, Memorandum Opinion and Order, 12 FCC Rcd 21396, 21441, ¶ 103 (1997).
[30] *See* 47 U.S.C. §§ 253(b)-(c). *See also*, *Moratoria Declaratory Ruling*, at ¶ 155 (finding moratoria almost certainly favor incumbents over new entrants).
[31] *See e.g.*, WIA Comments at 38-40.
[32] Small cell deployment issues raised in the record are largely limited to deployments of new structures, or collocations on existing structures such as light poles, in public rights-of-way. There is no substantial support in the record to preempt state or local zoning rules over new structures constructed for small cells outside the public right-of-way.
[33] *See*, *e.g.*, T-Mobile Comments at 6; Comments of Mobile Future, WT Docket No. 17-79, at 5(filed June 15, 2017) ("Mobile Future Comments"); Comments of Samsung Electronics America, Inc., WT Docket No. 17-79, at 3 (filed June 15, 2017) ("Samsung Comments"); Comments of the Telecommunications Industry Association, WT Docket No. 17-79, at 4 (filed June 15, 2017) ("TIA Comments"). *See also* Statement of Chairman Pai, *Accelerating Wireless Broadband Deployment by Removing Barriers to*

any federal preemption of local siting rules would naturally be limited to small cells that in fact differ substantially from macro towers.[34] The Commission should consider reiterating a key conclusion from its *2018 Small Cells Order*, which is that state and local governments will act as an "independent check" on the "indiscriminate" deployment of small cell deployments. One mechanism by which state or local governments can perform this function is by imposing cumulative or aggregate limits on the size of small cells and small cell structures. State and local governments' exercise of such authority would be fully consistent with Commission precedent, including the *2018 Small Cells Order*, and can help mitigate local government concerns that they may be unable to prevent the proliferation of wireless facilities that threaten aesthetic values.

American Tower supports the definitions of small cells and small cell structures adopted in the *2018 Small Cells Order*. The order established small cell volumetric limits of 3 cubic feet for antennas and 28 cubic feet for associated equipment.[35] It also limited the height of **new** structures hosting small cells to 50 feet or no more than 10 percent taller than surrounding structures.[36] The Commission also limited small cell **collocations** on existing structures to those that increased the height of the structure to a total of 50 feet, or ten percent, whichever is greater.[37]

Unlike previous Commission wireless infrastructure determinations, such as in the *2014 Order,* the *2018 Small Cells Order* did not include cumulative limits on the size of small cell equipment or small cell structures when it excluded such facilities from Federal environmental and historic preservation review.[38] It did not do so in large measure because the Commission recognized that state and local governments would act as an "independent check" to prevent "indiscriminate deployment" of small cell facilities and structures. As the Commission stated in the *2018 Small Cells Order*: "The existence of state and local review procedures, adopted and implemented by regulators with more intimate knowledge of local geography and history, reduces the likelihood that small wireless facilities will be deployed in ways that will have adverse environmental and historic preservation effects."[39] The Commission went on to state that local reviews would "act as an independent check" to ensure that the exclusion of small cells from federal review "will not have the effect of authorizing indiscriminate deployment."[40] American Tower urges the Commission to reiterate this key point in this proceeding by ensuring that local siting authorities retain the ability to impose overall size limitations on small cell antennas and equipment and structures in the right-of-way, as long as the limitations are consistent with cumulative limits adopted in the *2014 Order* which, as explained below, is an appropriate model, or with any pre-existing state or local cumulative limits on small cell facilities, whichever is more restrictive.

The *2014 Order* adopted cumulative size limits in two main contexts: It expanded the categorical exclusion for collocations contained in the Collocation Programmatic Agreement expressly to include small cell collocations; and, it

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Infrastructure Investment, Second Report and Order, WT Docket No. 17-79, FCC 18-30 (rel. March 30, 2018) ("*2018 Small Cells Order*") (current infrastructure rules "were designed with 200-foot towers in mind, not the highly-densified networks of small cells that will be common in the 5G world.").

[34] Preemption here is used more informally and includes the interpretive authority of the Commission to identify regulatory requirements or practices that violate Sections 253 and/or 332(c)(7).

[35] *2018 Small Cells Order*, at ¶¶ 75-78.

[36] *Id.* at ¶ 74.

[37] *Id*.

[38] *Id.* at ¶ 77 ("We are not persuaded to further restrict the definition of small wireless facility by placing an aggregation limit on the number of such facilities on a given structure or pole, as some propose.") The Commission expressed skepticism that even multiple small cells deployed on a single pole or structure would result in an aggregate deployment that would "resemble macrocells or towers of the sort the Commission generally envisioned in past public interest analysis," but even if they did, the Commission found its approach reasonable given the benefits of small cell deployments. *Id.* The Commission then went on to affirm that state and local governments can acts as a check on small cell deployments. *Id.*

[39] *Id*.

[40] *Id.* at n. 153.

implemented the provisions of Section 6409 of the Spectrum Act, which preempted local review of collocations that did not "substantially change" the size of the existing structure. It defined small cells as an antenna no larger than 3 cubic feet, the same size limitation in the *2018 Small Cells Order*, and imposed a total aggregate maximum of all antennas, including existing antennas, of six cubic feet.[41] The Commission's *2014 Order* further defined small cells by adopting varying cumulative limits on associated equipment based on the nature of the structure, including a limit of 28 cubic feet, the same as the *2018 Small Cells Order*, for collocations on poles that could accommodate at least 3 providers.[42]

The *2014 Order* also imposed limits on the overall increase in size of structures resulting from eligible collocations under Section 6409.[43] It concluded that changes in a structure should be measured against the original dimensions of the structure or only as the dimensions of the structure may have been increased following the siting procedures of the local government.[44] In this way, local governments were able to pass on any changes and ensure that they fell within local land use values. Although Section 6409 was not limited to small cells, its cumulative size limitations for structures should inform the extent to which local authority is preserved in limiting the increase in size of structures, or building new structures, in the right-of-way for small cells.

The cumulative size limitations in the *2014 Order* are an appropriate model for delineating the authority of state and local governments to prevent "size creep" for several reasons. In the *2014 Order,* the Commission was undertaking the same balancing of local prerogatives and the imperatives of deployment that the Commission is again addressing in this proceeding. As in the present proceeding, there was frustration that pre-existing rules developed for macro cells

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[41] *2014 Order*, 29 FCC Rcd at 12907-08 ¶ 92; Collocation Agreement Small Cell Amendment, Stipulation VI.A.5.a (limiting each antenna to no more than 3 cubic feet and setting a cumulative limit of 6 cubic feet for "all antennas on the structure, including any pre-existing antennas on the structure.") The *2014 Order* established these limits based on the size of the antenna's enclosures whereas the *2018 Small Cells Order* set the limit based solely on the size of the antenna. To be consistent with the *2018 Small Cells Order*, the aggregate size limitation should be based on antenna size rather than the size of the enclosure. *See 2018 Small Cells Order*, at n. 134.

[42] *2014 Order*, 29 FCC Rcd at 12907-08 ¶¶ 92-93 ; Stipulation VI.A.5.b. of the Collocation Agreement Small Cell Amendment, which implements the *2014* Order, provides the following cumulative limits for "[a]ll other wireless equipment associated with the structure, including pre-existing enclosures and including equipment on the ground associated with antennas on the structure, but excluding cable runs for the connection of power and other services, may not *cumulatively* exceed:

> "i. 28 cubic feet for collocations on all non-pole structures (including but not limited to buildings and water tanks) that can support fewer than 3 providers, or,
>
> ii. 21 cubic feet for collocations on all pole structures (including but not limited to light poles, traffic signal poles, and utility poles) that can support fewer than 3 providers; or,
>
> iii. 35 cubic feet for non-pole collocations that can support at least 3 providers; or,
>
> iv. 28 cubic feet for pole collocations that can support at least 3 providers. . .",

47 C.F.R. Part 1, App. B, Stip. VI.A.5.b (emphasis added).

[43] *2014 Order*, 29 FCC Rcd at 12946-49 ¶¶ 193-97.

[44] *Id.* at 12940 ¶182; The Commission found that increases in size resulting from the deemed approved process under Section 6409 could not be used to reset the structure's baseline size. It noted that "since the Spectrum Act became law, approval of covered requests has been mandatory and therefore, approved changes after that time may not establish an appropriate baseline because they may not reflect a siting authority's judgment that the modified structure is consistent with local land use values." *Id.* at 12948 ¶ 197.

were an impediment to the deployment of new small cell technologies that, for example, could be attached to utility or light poles with "limited or no potential to cause adverse effects on historic properties."[45]

More importantly, the Commission found, the context of local preemption under Section 6409, that the cumulative size restraints "establish an appropriate balance between promoting rapid wireless facility deployment and preserving States' and localities' ability to manage and protect local land-use interests."[46] To preserve this balance, the Commission concluded that changes to the size of structures resulting from collocating additional equipment should be subject to cumulative caps, "otherwise, a series of permissible small changes could result in an overall change that significantly exceeds our adopted standards."[47]

The *2018 Small Cells Order* took an important step in streamlining the Federal review of small cell deployments. In taking that step, it also recognized that local review will be an important independent check on small deployments. As it contemplates efforts to address local procedures that unduly burden or delay the deployment small cells in public rights-of-way, American Tower recommends the Commission reiterate the vital role played by local governments by affirming their authority to impose cumulative size limitations consistent with those adopted in the *2014 Order*.

[45] *See Id.* at 12876 ¶¶ 24-25. *See also, Wireless Telecommunications Bureau Announces Execution of First Amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, 31 FCC Rcd 8824, 8825 (rel. Aug. 8, 2016) ("Collocation Agreement Small Cell Amendment") (implementing aspects of the *2014 Order*).

[46] *2014 Order*, 29 FCC Rcd at 12946, ¶ 190. *See also id.* at ¶ 189 (establishing objective size limitations "will provide an appropriate balance between municipal flexibility and the rapid deployment of covered facilities."). The Commission noted that "[i]ndustry commenters also support applying the 'substantial change' test as a limit on cumulative increases by comparing changes to the state of the structure at some point in time." *Id.* at ¶184.

[47] *Id.* at 12948 ¶ 196.

Conclusion

American Tower strongly supports the Commission's efforts to advance the deployment of 5G wireless services and concurs that the Commission has ample authority to interpret Sections 252 and 332 to identify noncompliant local siting rules that unduly burden that deployment. In light of the forgoing, American Tower appreciates the Commission's consideration of the recommendations set forth above to accelerate the deployment of facilities while ensuring that local authorities retain authority to appropriately limit the cumulative size of small cells by:

- Establishing a 60-day shot clock for local government reviews of small cells on an existing or replacement pole in a public right-of-way and for collocations governed by Section 332(c)(7).
- Providing that applications would be deemed granted if the 60-day deadling set forth above is not met.
- Finding that modest expansions of macro cell site compounds to accommodate collocations do not constitute a substantial increase in size or a substantial change, consistent with the treatment of compound expansions for replacement poles.
- Reiterating that local authorities continue to have the ability to act as that "independent check" by allowing them to adopt cumulative equipment and structure size limitations as set forth in the Commission's *2014 Order* or to enforce any more restrictive pre-existing small cell cumulative caps.

We appreciate the opportunity to provide our perspectives, and the Commission's serious consideration of those views.

Sincerely,

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